

REMARKS

Applicant proposes to amend claim 1 in this response. Support for the proposed amendment can be found in paragraphs [0033] and [0034] and Figs 3 and 4 of the published application. No new matter would be added by this amendment.

Claims 2-4 and 10-20 were cancelled in prior responses.

Claims 1 and 5-9 are currently pending in the application.

Claims Rejections – 35 USC § 103

(A) Claims 1, 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,706,306 to Berger et al. (“Berger”).

This rejection is respectfully traversed in view of the amendment to claim 1.

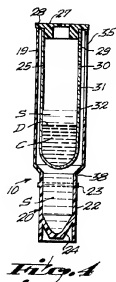
Of the claims rejected, claim 1 is independent, with the remaining claims dependent thereon.

Amended claim 1 now recites among other things an assembly with the following features:

an elongate tubular housing having a sidewall extending between opposed first and second ends; and
a solid partition in contact with said sidewall, positioned within said housing between said first and second ends, forming a closed bottom;
said housing defining a volume for specimen collection and containment therein between said first end and said partition;
said second end forming a false bottom comprising a bottom end below said partition, said bottom end comprising an annular skirt and a semi-spherical bottom.

Applicant submits that Berger fails to disclose, teach or suggest at least the claimed features of a solid partition in contact with said sidewall, positioned within said housing between said first and second ends, forming a closed bottom.

The Examiner proposes that Berger discloses an elongate tubular housing (19) having opposed first and second ends, with a solid partition (25) forming a closed bottom positioned within said housing between the first and second ends.



Berger discloses an elongated, unitary, blood sampling vacuum syringe, centrifuge container and specimen cup, for use with an ordinary tubular needle holder (see Fig. 4 shown above). Cylindrical blood sample collecting tube 25 is coaxially disposed and retained within the cylindrical housing member 19 by diaphragm plug cap member 27. The outer diameter of the blood sample collecting tube 25 is of somewhat lesser diameter than the internal diameter of the cylindrical housing member 19 within which it is coaxially disposed to provide a space between the outer surface of tube 25 and inner surface of housing member 19 (see Col. 3 line 55 to Col. 4 line 9). Vertically spaced openings 29, 30, 31, and 32 provided in an upper side wall portion of tube 25 and normally sealed off by means of a pressure-sensitive tear strip, are sequentially opened after centrifugation by manual removal of the tear strip to permit gravitation of the centrifuged blood serum between tube 25 and housing member 19 down into the specimen cup 20, after which said serum-filled specimen cup can be separated for use in analysis (see Col. 5 lines 3 to 25).

Therefore the blood sample collecting tube 25 of Berger does not contact the sidewall of housing member 19.

Conversely a solid partition in contact with the sidewall of the tubular housing would preclude; (a) a coaxial arrangement tube 25 within housing member 19, and (b) fluid flow from tube 25 to separation cup 20, thereby destroying the function of the Berger device.

Thus, Berger teaches away from having a solid partition in contact with said sidewall, positioned within said housing between said first and second ends, forming a closed bottom.

Accordingly, it is submitted that the container assembly as defined by claim 1 is not taught or suggested by Berger. In addition, claims 5, 6 and 9 being dependent on claim 1 are likewise patentable over the cited reference.

(B) Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger as applied to claim 1 and further in view of U.S. Patent No. 5,458,854 to Burns ("Burns").

These rejections are respectfully traversed.

Berger fails to disclose, teach or suggest the invention of claim 1 for the reasons as discussed above.

Burns is cited for use of a thermoplastic material.

Applicant submits Burns fails to disclose, teach, or suggest the claimed assembly of claim 1 as discussed previously and does not remedy the shortcomings of Berger. In addition, claims 7 and 8 being dependent on claim 1 are likewise patentable over the cited references.

Conclusion

In view of the proposed amendment and remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

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